Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-6673

ZACKARY C. BROWN,
Appellant,

—*v.*—

TEXAS

ON APPEAL FROM THE COUNTY COURT AT LAW
NUMBER TWO, EL PASO COUNTY, TEXAS

JURISDICTIONAL STATEMENT FILED MAY 1, 1978
PROBABLE JURISDICTION NOTED OCTOBER 16, 1978

In the Supreme Court of the United States

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RELEVANT DOCKET ENTRIES

In the Municipal Court of the City of El Paso No. 3, El Paso County, Texas:

Complaint filed December 10, 1977.

Appeal Bond filed December 20, 1977.

In the County Court at Law Number Two, El Paso County, Texas:

Motion to Set Aside Information filed February 1, 1978.

Judgment filed February 1, 1978.

Commitment filed February 1, 1978.

Notice of Appeal filed February 3, 1978.

First Amended Notice of Appeal filed February 14, 1978.

FAILURE TO IDENTIFY

IN THE MUNICIPAL COURT OF THE CITY
EL PASO NO. 3
El Paso County, Texas

No. 580

THE STATE OF TEXAS)
)
CITY AND COUNTY OF EL PASO)

COMPLAINT—Filed December 10, 1977

IN THE NAME AND BY AUTHORITY OF
THE STATE OF TEXAS:

I, Enrique Venegas, do solemnly swear that I have reason to believe and do believe that, in the City of El Paso, Texas, and County of El Paso, Texas, on or about the 9 day of December, 1977, and anterior to making and filing this complaint, Zachary Brown, did then and there intentionally refuse to report his name and residence address to a peace officer, to-wit: A. Sotelo & E. Venegas, who had lawfully stopped the said Zachary Brown, and requested the information;

Against the peace and dignity of the State.

/s/ [Illegible]
Affiant

[Jurat (omitted in printing)]

THE STATE OF TEXAS
COUNTY OF EL PASO
CITY OF EL PASO

TRANSCRIPT OF APPEAL—December 10, 1977

At a session of the Municipal Court of the City of El Paso No. 3 for the City of El Paso in said county held before Glen Sutherland, Judge for said city in said city on the 10 day of Dec., A.D. 1977 the following criminal action was tried, to-wit: The State of Texas vs. Zachary C. Brown, No. 580.

And the following are the proceedings had in said criminal action before said court, to-wit: On Dec. 10, 1977, at the time set by the court to be heard the described cause. The defendant and defendant's attorney appeared and announced ready for trial. A plea of Not Guilty was entered to the offense charged in the complaint on file in this case. After having heard and considered the evidence and argument, this court finds and adjudges defendant guilty of the offense charged in the complaint on file in this cause and accordingly assesses a fine of 20.00 and court costs of 2.50. It is therefore ordered and adjudged by this court that the State of Texas for the use and benefit of the City of El Paso, Texas, do have and recover of defendant the sum of the fine and court costs assessed and it is further ordered and adjudged by the court that defendant be committed to and remain in the custody of the Chief of Police of the City of El Paso, Texas, until such fine is paid. Let execution issue to collect such fine. Let capias issue.

/s/ Glen Sutherland
Judge of the Municipal Court
of the City of El Paso No. 3

On Dec. 10, 1977, the said defendant gave notice in open court to Judge Glen Sutherland of his appeal to County Court at Law No. 2 of El Paso County, Texas.

/s/ Glen Sutherland
Judge of the Municipal Court
of the City of El Paso No. 3

The State of Texas
County of El Paso
City of El Paso

I, Herman Tafoya, Clerk of the Municipal Court of the City of El Paso No. 3 in said county, do certify that the foregoing is a complete and correct transcript of all the proceedings had before said court in the said cause of The State of Texas v. Zachary C. Brown No. 580.

Witness my signature on this 20 day of Jan., A.D. 1978.

/s/ Herman Tafoya
Clerk of the Municipal Court
of the City of El Paso No. 3

By /s/ [Illegible]
Deputy Court Clerk

IN THE COUNTY COURT AT LAW NUMBER TWO
EL PASO COUNTY, TEXAS

No. 90916

THE STATE OF TEXAS, PLAINTIFF

vs.

ZACKARY C. BROWN, DEFENDANT

MOTION TO SET ASIDE INFORMATION—
Filed February 1, 1978

TO THE HONORABLE COUNTY COURT AT LAW NUMBER TWO:

ZACKARY C. BROWN, Defendant above, moves this Court to dismiss all charges against him for failure or refusal to identify himself for the following reasons:

I.

The statute under which the Defendant is being prosecuted, Section 38.02 of the Texas Penal Code, is unconstitutional under the United States Constitution because it violates the Fifth and Fourteenth Amendment due process clauses, because it is vague and overbroad, and can punish innocent acts, because it invades the Fourth Amendment right of privacy, because it is possible under the statute to punish one's First Amendment right of silence as a form of expression, and also the right under the Fifth Amendment to remain silent.

For all the foregoing reasons, the Defendant respectfully moves this Court to dismiss all charges against him.

Respectfully submitted,

PEARSON & CABALLERO
Attorneys for Defendant
1610 State National Plaza
El Paso, Texas 79901

By /s/ Raymond C. Caballero
RAYMOND C. CABALLERO

IN THE COUNTY COURT AT LAW NO. 2
OF EL PASO COUNTY, TEXAS

No: 90916-2

THE STATE OF TEXAS

vs.

ZACKARY BROWN

JUDGMENT—Filed February 1, 1978

On this day this cause was called for trial; and came the State of Texas by and through its Assistant County Attorney, and the Defendant Zackary Brown appeared in person and by attorney, and the parties announced ready for trial. The Defendant thereupon waived a jury and submitted his case to the Court; the Complaint was read to the Defendant and the Defendant pleaded not guilty thereto; and the Court having heard the Complaint read and the Defendant's plea of not guilty thereto, the evidence in the case, the arguments of counsel, and being fully advised in the premises, doth hereby consider, adjudge and decree that the said Defendant is guilty of the offense charged and that the State of Texas recover of the Defendant a fine of $45.00 and all costs of the prosecution, and that the Defendant, if present, be committed to jail until such fine and costs are paid; or if the Defendant be not present, that a capias forthwith issue, commanding the Sheriff to arrest the Defendant and commit him to jail until such fine and costs are paid; also, that execution may issue against the property of such Defendant for the amount of such fine and costs.

COMMITMENT - filed February 1, 1978

THE STATE OF TEXAS

IN THE County Court At Law #2 OF EL PASO COUNTY

Jan Term, 1978

TO THE SHERIFF OF EL PASO COUNTY—GREETING:

WHEREAS, on the 1st day of Feb, A. D., 1978, a judgment was rendered by the County Court At Law #2 of El Paso County, Texas, in favor of the State of Texas, against Zachary Brown in Cause No. 70916 wherein said Zachary Brown was charged with the offense of Failure to Identify and his punishment assessed at imprisonment in the County Jail of said County for a term of _____ and a fine of $ 45.00 and the further sum of $ 42.00 costs of his prosecution.

These are therefore to authorize and command you to take the body of the said Zachary Brown and commit him to the County Jail of said County there to remain until such judgment is fully paid, or until he is otherwise legally discharged by due course of law.

HEREIN FAIL NOT, and due return make hereof as the law directs.

Given under my hand and seal of said Court, at office in El Paso, Texas, on this the 1st day of Feb, A. D. 1978

(SEAL)

La Donna McConnell County Clerk

By Wilda Rhea Deputy

BILL OF COSTS

CLERK'S COSTS			Amt. Clerk's costs brought forward	15.	75
Issuing Capias		75	**SHERIFF'S FEES**		
Entering Appearance		15	Arrest	3	00
Docketing Cause		25	Bond		
Swearing and Empaneling Jury, etc.			Summoning Witnesses		
Issuing Subpoenas			Mileage		
Swearing Witnesses			Jury Fee		
Inserting add'l Names			Commitment	2	00
Issuing Attachment			Release	1	00
Entering Order			County Attorney's Fee	15	00
Filing Papers			**COUNTY FEES**		
Judgment	1	00			
Entering Continuance			Trial	5	00
Entering Motion			Jury		
Entering Recognizance			Fine COP	45.	00
Entering Information		10			
Commitment	1	00			
Clerk's costs carried forward			Total Fine and Costs $	87.	75

(SEAL)

A true bill of costs I hereby certify:

La Donna McConnell County Clerk

By Wilda Rhea Deputy

IN THE COUNTY COURT AT LAW NUMBER TWO
EL PASO COUNTY, TEXAS

No. 90916

THE STATE OF TEXAS, PLAINTIFF

vs.

ZACKARY C. BROWN, DEFENDANT

ORDER—February 3, 1978

TO THE HONORABLE COUNTY COURT AT LAW NUMBER TWO:

ON THIS 3 day of February, 1978, came on to be considered Defendant ZACKARY C. BROWN's Application For Stay of Execution of Judgment Pending Appeal. The Court, having fully considered said Application and having heard the evidence thereon, is of the opinion that said application should be granted.

IT IS THEREFORE ORDERED that said Application of Defendant for Stay of Execution of Judgment Pending Appeal be, and the same is hereby, granted.

SIGNED on February 3, 1978.

/s/ John L. Fashing
JOHN L. FASHING
Judge

IN THE COUNTY COURT AT LAW NUMBER TWO
EL PASO COUNTY, TEXAS

No. 90916

THE STATE OF TEXAS, PLAINTIFF

vs.

ZACKARY C. BROWN, DEFENDANT

NOTICE OF APPEAL—Filed February 3, 1978

TO THE HONORABLE COUNTY COURT AT LAW NUMBER TWO:

ZACKARY C. BROWN, Defendant above, hereby gives notice to this Court of his intention to appeal the Judgment of Conviction entered in this cause.

Respectfully submitted,
PEARSON & CABALLERO
Attorneys for Defendant
1610 State National Plaza
El Paso, Texas 79901

By: /s/ Raymond C. Caballero
RAYMOND C. CABALLERO

[Certificate of Service (Omitted in Printing)]

IN THE COUNTY COURT AT LAW NUMBER TWO
EL PASO COUNTY, TEXAS

No. 90916

THE STATE OF TEXAS, PLAINTIFF

vs.

ZACKARY C. BROWN, DEFENDANT

MOTION TO PROCEED IN FORMA PAUPERIS
—Filed February 3, 1978

TO THE HONORABLE COUNTY COURT AT LAW NUMBER TWO:

ZACKARY BROWN, Defendant above, respectfully moves this Court to allow him to proceed in *forma pauperis* for the following reasons:

ZACKARY BROWN is truly in *forma pauperis* in that he has no property or income with which to retain an attorney or to assist him in his appeal.

The Court has heretofore been given an affidavit in *forma pauperis* executed by ZACKARY BROWN under oath.

Respectfully submitted,

PEARSON & CABALLERO
Attorneys for Defendant
1610 State National Plaza
El Paso, Texas 79901

By: /s/ Raymond C. Caballero
RAYMOND C. CABALLERO

[Certificate of Service (Omitted in Printing)]

IN THE COUNTY COURT AT LAW NUMBER TWO
EL PASO COUNTY, TEXAS

No. 90916

THE STATE OF TEXAS, PLAINTIFF

vs.

ZACKARY C. BROWN, DEFENDANT

ORDER—Filed February 3, 1978

TO THE HONORABLE COUNTY COURT AT LAW NUMBER TWO:

ON THIS 3 day of February, 1978, came on to be considered Defendant ZACKARY C. BROWN's Motion to proceed in *forma pauperis*. The Court, having fully considered said Motion and having heard the evidence thereon, is of the opinion that said Motion should be granted.

IT IS THEREFORE ORDERED that said Motion of Defendant to proceed in *forma pauperis* be, and the same is hereby, granted.

SIGNED on February 3, 1978.

/s/ John L. Fashing
JOHN L. FASHING
Judge

IN THE COUNTY COURT AT LAW NUMBER TWO
EL PASO COUNTY, TEXAS

No. 90916

THE STATE OF TEXAS, PLAINTIFF

vs.

ZACKARY C. BROWN, DEFENDANT

FIRST AMENDED NOTICE OF APPEAL
—Filed February 14, 1978

TO THE HONORABLE COUNTY COURT AT LAW NUMBER TWO:

ZACKARY C. BROWN, Defendant above, hereby gives notice to this Court of his intention to appeal the Judgment of Conviction entered on February 1st, 1978. A final Judgment having been rendered by the highest Court of this State in which a decision could be had, an Appeal to the Supreme Court of the United States is sought pursuant to Title 28, U.S.C.A. Section 1257 (2).

Respectfully submitted,

PEARSON & CABALLERO
Attorneys for Defendant
1610 State National Plaza
El Paso, Texas 79901

By: /s/ Raymond C. Caballero
RAYMOND C. CABALLERO

[Certificate of Service (Omitted in Printing)]

IN THE COUNTY COURT AT LAW NO. 2
EL PASO COUNTY, TEXAS

No. 90916

THE STATE OF TEXAS

v.

ZACKARY BROWN

TRANSCRIPT OF TESTIMONY—February 1, 1978

BE IT REMEMBERED, that on this, the 1st day of February, A. D. 1978, the following testimony was introduced before the Honorable John L. Fashing, Judge, County Court at Law No. 2, El Paso County, Texas, in the above styled and numbered cause.

APPEARANCES:

FOR THE STATE:

Mr. Craig Patton, Assistant County Attorney
Room 201 City-County Bldg., El Paso, Texas

FOR THE DEFENDANT:

Mr. Raymond Caballero, 1610 State National Plaza, El Paso, Texas

[2] THE COURT: We're here on the case of the State of Texas v. Zackary Brown on the offense of Failure to Identify under Article 38.02 of the Texas Penal Code, which reads, "A person commits an offense if he intentionally refuses to report, or gives a false report of his name and residence address to a peace officer who has lawfully stopped him and requested the information." An offense under that section is a Class C misdemeanor. Now the Defendant has filed a Motion to Dismiss the Information on the grounds that it is unconstitutional

upon its face under the United States Constitution. And we'll hear the arguments or any evidence, if there is any, on that first. Does the State have any response?

MR. PATTON: The State would contend, your honor, that this particular statute is not vague or overbroad, but that it does specify that one only report his name and address upon request by a police officer. It also states as one of the elements of the offense that the individual has to be lawfully stopped, and naturally under this instance, being lawfully stopped, an officer needs some sort of basis from the circumstances involving the stop to draw any circumstances and to have some sort of reasonable inference from these circumstances that perhaps a crime has been committed, or is about to be committed, something of the like. And what the State [3] is contending is that an officer, and reading the Statute, he simply cannot go up to anyone on the street.

THE COURT: Well let's assume it's a lawful stop, whether it's on probable cause or perhaps just a stop and frisk case, you know, under the Constitution, that they permit. Let's assume that that's a lawful stop.

MR. PATTON: What the State's contending is the lawful stop provides a safeguard.

THE COURT: What about after the lawful stop, then where are you at?

MR. PATTON: Okay, well, as I said, the Statute, I think, is specific as to reporting an individual's name and address. The Defendant's counsel contends that the Statute is vague and overbroad.

THE COURT: Yeh, but why is it lawful to, he contends more than that.

MR. PATTON: Yeh, not having researched these other areas, I really can't state right now. I can't argue the other arguments that he proposes.

THE COURT: Well you're a lawyer now and prosecutor both for the [4] State. What do you think about if you stop a person lawfully, and then if he doesn't want to talk to you, you put him in jail for committing a crime.

MR. PATTON: Well first of all, I would question the Defendant's statement in his motion that the First Amendment gives an individual the right to silence.

THE COURT: I'm asking this question, rather than looking, I'm asking you why should the State put you in jail because you don't want to say anything.

MR. PATTON: Well, I think there's certain interests that have to be viewed.

THE COURT: Okay, I'd like you to tell me what those are.

MR. PATTON: Well, the Governmental interest to maintain the safety and security of the society and the citizens to live in the society, and there are certainly strong Governmental interests in that direction and because of that, these interests outweigh the interests of an individual for a certain amount of intrusion upon his personal liberty. I think these Governmental interests outweigh the individual's interests in this respect, as far as simply asking an individual for his name [5] and address under the proper circumstances.

THE COURT: But why should it be a crime to not answer?

MR. PATTON: Again, I can only contend that if an answer is not given, it tends to disrupt.

THE COURT: What does it disrupt?

MR. PATTON: I think it tends to disrupt the goal of this society to maintain security over its citizens to make sure they are secure in their gains and their homes.

THE COURT: How does that secure anybody by forcing them, under penalty of being prosecuted, to giving their name and address, even though they are lawfully stopped?

MR. PATTON: Well I, you know, under the circumstances in which some individuals would be lawfully stopped, it's presumed that perhaps this individual is up to something, and the officer is doing his duty simply to find out the individual's name and address, and to determine what exactly is going on.

THE COURT: I'm not questioning, I'm not asking whether the officer shouldn't ask questions. I'm sure they should ask everything [6] they possibly could find out. What I'm asking is what's the State's interest in putting a man in jail because he doesn't want to answer something. I realize lots of times an officer will give a defendant a Miranda warning which means a defendant doesn't have to make a statement. Lots of defendants go ahead and confess, which is fine if they want to do that. But if they don't confess, you can't put them in jail, can you, for refusing to confess to a crime?

MR. PATTON: I think in a way not identifying oneself tends to thwart the police power. Because, for instance, if an individual has committed a crime and if he refuses to identify himself, that tends to thwart the process.

THE COURT: Doesn't it also tend to thwart the process when you appoint a lawyer to defend him, and the lawyer tells him to take the Fifth Amendment.

MR. PATTON: Well I don't think privilege against self-incrimination would cover giving one's name.

THE COURT: Why is that?

MR. PATTON: I don't think it's included with the privilege against self-incrimination under the Fifth Amendment.

[7] THE COURT: Why not?

MR. PATTON: Well I can't state you a case right off hand.

THE COURT: Well can you state me some logic?

MR. PATTON: Well, simply giving one's name and address does not mean that that person is guilty of any crime. It's certainly not self-incriminating.

THE COURT: Well, isn't it a, would the Fifth Amendment protect a person from having to tell the police, I'm a fugitive.

MR. PATTON: I think under those circumstances saying that one is a fugitive might be self-incriminating, but again, I would not . . .

THE COURT: But it's common knowledge to this Court that when the police stop and ask for a name and address, not all the time but I'm sure quite often, if not most of the time, they'll check on the radio to see if there's an outstanding warrant. And then if there is, the man has to go to jail.

MR. PATTON: I think what underlies the statute is that a policeman cannot, as I said earlier, stop any person walking down the [8] street. He has to have some circumstances, some reasonable inference drawn upon from his experience as a police officer that this individual at this particular time and place might have committed a crime or is about to commit a crime, or some circumstances showing that.

THE COURT: I understand that it's a lawful arrest, you know, I mean a lawful stop. But what about after a lawful stop, why does it become a crime not to give your name and address, other than the statute. Well okay, is there anything else you have. I just thought you could help the Court with some of the reasons. Mr. Caballero.

MR. CABALLERO: Yes, your Honor, just very briefly, I want to make sure that I, the lawful stop, I'm assuming that the State here, through its police officers, had some reason to make an initial stop and ask a question or so. I'm not assuming that they made the stop for the purpose of asking the name. If the purpose of the stop was I want to ask this fellow's name, then of course I would contend that that's not a lawful purpose, if you're just curious about a fellow's name. If the purpose of the stop was some other legitimate reason, and they just wanted to start asking him some questions, of course, I think the State has, they have the right to free speech also, the policeman can say pretty much what he wants to say, and ask whatever [9] he wants to ask.

THE COURT: I hope they do ask lots of questions. Lots of people who have committed crimes, for some reason answer questions that gets them in hot water, which is good, you know.

MR. CABALLERO: What happens is that a person, for whatever reason he has, and it's his own personal reason, it's his right. If he doesn't want to answer those questions, then what happens is that that's the end of it. Unless they have something they can charge him with, other than the Statute here, I'm contending

that's the end of it. If they don't have probable cause to believe some crime, other than refusing to give your name, has been committed or that they're in danger or someone else is in danger, that's the end of it. The State's interest has stopped. The State's interest that the County Attorney's office is talking about here to protect people, their person and place and so forth, I think everyone recognizes that. But I think the evidence is going to show here, and I think the Statute on its face allows police officers and other peace officers to stop a person simply to ask their name, even just to stop them, ask their name, and if they don't answer, they can put them in jail. Now there are cases here in El Paso, I think the County Attorney's office will agree with me, where they ask a name and the fellow says, this is my name and then [10] they say, where's your identification, and then he doesn't have the ID and they stick him in jail for that. Because they figure that an oral identification is not sufficient and they have to exhibit some form of identification. And our contention here Judge, aside from the various Constitutional amendments applicable, and our contention basically is that in this country, in large part, one doesn't have to walk around with papers, like one did in countries with marshall law or Nazi Germany or Soviet Russia or wherever and they'd stop you and say, where are your papers anytime they want to. We've never had that system here. And if a person, for whatever reason he has, decides to remain totally silent and is not being abusive or causing someone any problem, he has the right to remain silent. Now unless they know of something that he did that's the end of it.

THE COURT: Well, what happens if he committed a crime in their presence and they actually arrested him, that's a lawful stop.

MR. CABALLERO: And they charged him with additional failure to identify?

THE COURT: When they ask him and he dosen't want to say anything?

MR. CABALLERO: It's the same thing again, whether you committed no crime or whether you committed a crime and they wanted to [11] stack a charge of failure to identify on top of it, it's all the same, in any instance, whether one has committed a crime or whether one has not committed a crime, one has the right to privacy, to remain silent, not to say anything. Conceivably a person's name could incriminate him. I can see that if a person is driving down the street, and there's something the matter with his car or there's a routine license check, he might want to stop him and see if someone is lawfully driving. The State has an interest to see that persons are licensed to drive and the license, in addition to a license, is a form of identification. That's not what we have here, you don't need a license to walk.

THE COURT: This is a pedestrian case.

MR. CABALLERO: That's what I'm saying, you don't need a license to walk, so I'm distinguishing whatever the State may have to ask for identification at other times. One does not have the right to ask someone because he's walking down an alley, or a street, or whatever, for identification or for a license to walk or whatever they want to stop him for, and that's our contention here Judge.

THE COURT: Okay, well the Court will, I've been studying or looking for some case law on this question. There's one case, Row [12] v. Ingramham, 403 Fed. Sup. 931, 1975. And it shows that probable jurisdiction was noted by the United States Supreme Court, the United States Supreme Recorder 1,100, but I haven't had time to find out what happened in the Supreme Court on that.

MR. CABALLERO: May I ask Judge, what Statute is involved in the Rowe case?

THE COURT: I don't know, it's something to do with having to give the names of persons who receive some type of medical treatment, receive some type of drug prescription from doctors and whether they had to give the names of persons, but I've only perused the case here this morning. I'm going to have to go see what the Supreme Court did. But under headnote 3 it seems

to be getting under that case and it may have something to do possibly with this case about a man has the right to be left alone. I'll consider your motion, including all the grounds set out in this Rowe v. Ingraham case. And then I have the case here of Shelton v. Tucker, United States Supreme Court 364 U.S. 479, 508 2nd 231, and it's also talking about having constitutional rights to privacy, and I'll consider all the grounds alleged in there as being before the Court. However, there's a stronger ground that the Court in Texas has to indulge in, the presumption that all State Statutes are [13] constitutional, unless it's clear that it's unconstitutional. Inasmuch as there appears to be no Texas cases to ever deal with this Statute to my knowledge, and not being able to even find a similar statute in my brief research from any other state or federal cases right on that point, I'll have to find that the Texas statute is constitutional even though I think there's a substantial federal question here, and an Appellate Court, after due consideration, might well hold the Statute unconstitutional upon its face. I can't reach that conclusion with the cases I have available at this time. So is the State ready to proceed on the merits?

MR. PATTON: The State is ready, your Honor.

MR. CABALLERO: The Defendant's ready, your honor.

THE COURT: Now, does the Defendant wish to waive his trial by jury?

MR. CABALLERO: Yes, your honor, I've advised my client of his right to trial by jury and we waive it.

THE COURT: Okay, Mr. Zackary Brown, is that correct? Do you want to waive your right to trial by jury?

MR. BROWN: Yes, your honor.

[14] THE COURT: Does the Defendant waive the reading of the Complaint.

MR. CABALLERO: Your honor, we'd like it read.

THE COURT: I'll consider your motion to set aside the Information, really it'd be a motion to set aside the complaint, cause this is not an Information as this is a

trial de novo from an appeal from City Court, and here is the complaint. The State will read it.

MR. PATTON: The State of Texas, City and County of El Paso, in the name and by the authority of the State of Texas, I, Enrique Venegas do solemnly swear that I have reason to believe and do believe that in the City of El Paso, Texas, and County of El Paso, Texas, on or about the 9th day of December, 1977, and interior to making and filing this complaint, Zackary Brown did then and there intentionally refuse to report his name and residence address to a peace officer, to-wit, A. Sotelo and Enrique Venegas, who had lawfully stopped the said Zackary Brown and requested the information against the peace and dignity of the State. Signed Alfredo Sotelo, Affiant. Subscribed and sworn on the 9th day of December, 1977.

THE COURT: What says the Defendant and how do you plea?

[15] MR. CABALLERO: We plead not guilty to the charge.

THE COURT: Okay, the State may call its first witness.

MR. PATTON: Officer Venegas.

ENRIQUE VENEGAS, JR. having been duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. PATTON:

Q. Okay Officer, would you please state your full name to the Court?
A. Enrique Venegas, Jr.
Q. And how are you employed Officer?
A. I'm a Police Officer for the City of El Paso.
Q. In what capacity are you employed by the City?
A. Patrolman.
Q. And were you so employed in that capacity on or about December 9, 1977?
A. I was.

Q. Now on that date in question, you came into contact with one Zackary Brown, is that correct?
A. That's correct.
Q. And you were driving down Magoffin Street by the 3000 block of Alameda?
[16] A. Yes sir.
Q. And that was at approximately 12:45 P.M. on December 9, 1977?
A. Yes it was.
Q. And on that date and time in question, while you were driving down Magoffin, you had occasion to notice one Zackary Brown, is that correct?
A. That's correct.
Q. Okay, will you please explain to the Court what led you to first notice Zackary Brown?
A. Okay, we were patroling the area and we noticed the subject walking down the alley behind Alameda.
Q. Behind Alameda, and you were driving on Magoffin, is that correct?
A. Right, Magoffin.
Q. And you had a view of the alley from the position of yourself on Magoffin Street?
A. That's correct.
Q. Now, were you in a vehicle or were you on foot?
A. We were in a vehicle.
Q. Is there any particular reason, what led you to first notice Zackary Brown in that alley?
A. Well because we noticed him walking and that's a very high drug . . .

MR. CABALLERO: [17] Judge, I object to the characterization of the neighborhood in one way or the other as high crime area, one of these terminologies. The man hasn't been charged with anything but failure to give his name. What people may do in the neighborhood is totally irrelevant to the case.

THE COURT: Okay, overruled.

MR. PATTON:

Q. Was there anyone else in that alley?
A. Yes sir, there was another subject wearing an overcoat.

Q. What did you notice about him, was there anything unusual?

A. He was limping, and as we approached them, they seemed to separate, or. . . .

Q. Had they been speaking to one another?

A. We were unable to tell that, if that had occurred.

Q. But they were together, is that correct?

A. They were either together or they were going to be together.

Q. Were they walking toward one another?

A. We couldn't tell, we just know that as soon as we drove up, they just separated, and if they were going towards each other, they went their separate ways, or if they had been together, they just separated.

Q. Did they walk past one another?

[18] A. I was unable to see that.

Q. Let me ask you this. You saw Mr. Brown in the alley along with this other subject, why then did you stop Zackary Brown?

A. Because it looked suspicious and we had never seen that subject in that area before.

Q. Why was it so suspicious for him to be in that area?

A. Because of . . .

MR. CABALLERO: Judge, here again I have an obligation to any characterization calling for some sort of conclusion that people standing in an alley talking to one another, if that's what they were doing, there's not even evidence that they were doing that. That being someplace with anybody is suspicious, there's no evidence of any crime. I object to any characterization as that activity being suspicious when it's not.

THE COURT: Okay, overruled, go ahead.

MR. PATTON:

Q. Okay, you stopped Zackary Brown, is that correct?

A. That's correct.

Q. Is Mr. Brown in this courtroom today?

A. Yes he is.

Q. Would you please identify him for the Court?

A. It's that gentleman sitting over there.

[19] Q. What color jacket is he wearing?

A. Navy Blue.

Q. Your honor, at this time I'd like the record to reflect that the witness has identified the defendant in this cause, Zackary Brown.

THE COURT: The record will so reflect.

MR. PATTON:

Q. Now you were in your patrol car at the time, is that correct, when you first noticed Mr. Brown?

A. Yes, I was.

Q. And did you get out of your patrol car and walk up to the alley to where Mr. Brown was?

A. No, we drove up.

Q. And you got out of the patrol car?

A. When we approached, yes.

Q. And what did you ask Mr. Brown?

A. We asked him what his name was and what he was doing in the alley.

Q. Are these the only questions you asked him at that time?

A. At that time, yes.

Q. And did he tell you his name at that time?

A. No he did not.

Q. Did he give any reason why he wasn't going to tell you his name?

[20] A. At the beginning he did not. When he had his hands in his pocket we also asked him if he would please take his hands out of his pocket, and he did not the first time. The second time he did, and that's when my partner patted him down.

Q. Well did he give you any reason why he didn't want to tell you what his name was?

A. No he did not.

Q. He just refused to tell you his name and left it at that?

A. The first couple of times we asked him, he refused.

Q. You asked him for his name more than once?

A. Yes.

Q. And on those occasions which you asked him for his name while there in the alley, he refused on all occasions to to give you his name?

A. Correct.

Q. Now, did you identify yourself as a police officer?

A. We were in uniform and we were in a patrol car, it was obvious that we were police officers.

Q. So you presumed that the defendant would realize from your uniform and also the vehicle you were driving, that you were police officers?

A. Correct.

Q. What was the Defendant's attitude during this time that [21] you confronted him in the alley?

A. He was very discourteous, he was yelling at us saying that we had no right, no reason to stop him.

Q. At all times were you polite and courteous towards him?

A. Yes we were.

Q. And you did give him ample opportunity to identify himself at the scene, is that correct?

A. That's correct.

Q. And what did you eventually do when he still refused to identify himself?

A. We put him under arrest, brought him to Central Station and booked him.

Q. I have no further questions.

CROSS EXAMINATION

BY MR. CABALLERO:

Q. Mr. Venegas, going back to the scene, this was daylight, was it not?

A. Yes sir.

Q. In fact, I think you said it was 12:45 P.M.?

A. Yes.

Q. And what were the weather conditions like?

A. Sunny and bright.

Q. Now that part of town were you were, was the alley paved or unpaved?

A. They alley was unpaved.

[22] Q. And it has a clear view. In other words, if you're going down Magoffin Street, you can just go right into the alley, can you not?

A. Yes.

Q. You say you saw two individuals at first when you and the other officer drove up to the scene, there were two individuals in the alley, is that correct?

A. Correct.

Q. This was on December 9th?

A. Yes.

Q. And one of the individual's was wearing a coat?

A. An overcoat.

Q. Is that rare in El Paso?

A. In sunny weather it is.

Q. In sunny weather it was, and did you ever stop that individual?

A. No.

Q. You never did, and when my client, Mr. Brown and the other individual were in the alley, when you first saw them, how far apart were they?

A. Couple of feet.

Q. Couple of feet, and were they facing each other or were their backs against each other?

A. They were walking away from each other.

Q. They were walking away from each other. At that point, [23] if that's the first thing you saw, you don't know if two people were just crossing each other in the alley or not, do you?

A. No.

Q. And you never did find out, did you?

A. No.

Q. Was the other individual, can you describe him by race?

A. It was a black man.

Q. And could you describe Zackary Brown for me?

A. He's a black man.

Q. How old is Zackary?

A. Mid twenties, approximately mid twenties.

Q. That part of town, is it rare to see black people in that part of town?

A. No, it's not.

Q. As a matter of fact, would I be correct in saying that it's an area of town probably where more blacks congregate than any other area?
A. I don't know if that's a fair statement.
Q. You don't know whether or not the area on Alameda Street right between Piedras and three or four blocks east is an area known to be frequented by blacks, officer?
A. It's frequented by blacks, but you said that it's the most highly populated area by blacks.
Q. No, I said frequented by blacks. Do you know of any [24] other area in town where blacks hang out, you see more blacks than you do on Alameda Street between Piedras and three blocks east officer?
A. Yes.
Q. What other area?
A. Dyer Street.
Q. Dyer Street, lot of military people up there?
A. Yes.
Q. So it would be fair to say that those two areas are ones where you see more blacks than any other?
A. Yes.
Q. Okay, so you see a black person in that part of town is not unusual, is it?
A. No, it's not.
Q. Have you seen, do you know every black that frequents the Alameda area?
A. Most of them.
Q. You know most of them, my question was, do you know every one of them?
A. No.
Q. And every time you meet a new one, do you stop him to ask his name?
A. No.
Q. Did you, was there any action by my client that he was armed or committed a crime at that time?
[25] A. No.
Q. The only thing you wanted to do was stop him and ask him his name?
A. Correct.

Q. That's all?
A. That's all.
Q. And that's what you did?
A. Yes.
Q. And when you did stop him and he told you, he asked you why did you stop me, isn't that true?
A. No.
Q. Or words to that effect, did he say you have no reason to stop me?
A. Correct.
Q. And did you tell him you had a reason?
A. Just told him that he was walking in the alley and that was a high drug problem area.
Q. And you asked him for his name?
A. Correct.
Q. And did he, aside from what he may have said officer, did he kick you or become disorderly or push you or anything like that?
A. No.
Q. And you didn't pat him down?
A. My partner patted him down.
[26] Q. Did he find any weapons on him?
A. No.
Q. Did you find any drugs on him?
A. No.
Q. And once you found out he hadn't been committing a crime, and you asked him for his name again, did he give it to you?
A. No.
Q. And what did you do then?
A. We arrested him.
Q. And for what?
A. For failure to identify.
Q. How many people have you arrested for those things before officer?
A. That was my first.
Q. That was your first. Is it, how long have you been on the force now?
A. Since October.

Q. In other words, you'd been on the force a little more than a month or so, and you made your first arrest for failure to identify?
A. Correct.
Q. Have you made any since?
A. Make any since?
Q. Have you arrested anybody since then for failure to [27] identify themselves?
A. No.
Q. Is it a rare thing for someone in the Police Department to arrest somebody for failure to identify?
A. I can only speak from my experience.
Q. Well, from your experience?
A. Yes.
Q. All right, when you go to Police School, were you advised that it was a crime to refuse to give an officer a person's name and address?
A. Yes.
Q. You were told that?
A. Yes, it's in the Penal Code.
Q. All right, but when you go to school they tell you, there are a lot of things in the Penal Code that you may not know about, but they told you though that was one of the things in the Penal Code?
A. Correct.
Q. And did they tell you that if someone, for absolutely whatever reason they had, refused to give you, a police officer, his name or her name, that you can then proceed to arrest him and book him?
A. Correct.
Q. And that's what you did with Mr. Brown?
A. Right.
[28] Q. And were you ever told since then that you shouldn't have done that or make sure that someone committed a crime, or you had reason to believe they did, or anything like that?
A. No, I have not.
Q. They've never told you otherwise?
A. No.

Q. The only reason you arrested him is because a person refuses to provide his name, is that correct?
A. Right.
Q. Where did you book my client, Mr. Brown?
A. Where did I book him?
Q. Yes sir?
A. County Jail.
Q. El Paso County Jail, and he was placed in there the same as any other prisoner that you may have picked up for committing a violation of some sort, is that correct?
A. Correct.
Q. And was there a bond placed on him?
A. I believe so.
Q. Do you recall the amount?
A. No.
Q. Did you have any more involvement with the case after that officer?
A. No, I did not.
[29] Q. Now when my client was booked at the County Jail, aside from patting him which your partner had already conducted, they searched him more thoroughly there, did they not, while being processed in the jail?
A. Yes.
Q. And do you participate in that process or is that something done by the Sheriff of El Paso County?
A. We give him another search before we take him to jail.
Q. All right, did you give my client, Mr. Brown, another search?
A. I believe he was taken to jail by my partner.
Q. By your partner?
A. I don't quite recall.
Q. Anyway he was searched again according to procedures?
A. Right.
Q. Was anything found of an illegal nature?
A. No.
Q. Officer, after you made the arrest, because my client refused to give you his name, when you were on the

way downtown to book him in the jail, he finally did tell you what his name was, didn't he?

A. Yes.

Q. But he had already committed the violation, is that correct?

A. Correct.

[30] Q. So once you had his name, it didn't help you any one way or the other, did it?

A. No.

Q. But in your opinion, the way this law is written, the crime had already been committed?

A. Correct.

Q. Pass the witness.

THE COURT:

Q. Did you ever ask him what his residence address was?

A. Yes, we did.

Q. Did he refuse to tell you that?

A. Before we placed him under arrest, before we arrested him, yeh, he refused.

Q. Including his address?

A. Yes, including his address.

MR. CABALLERO: That's all we have, your honor.

THE COURT:

Q. Didn't you go to Corporation Court to testify?

A. My partner went to Municipal Court I believe.

THE COURT: Okay, does the State have anything further?

MR. PATTON: The State rests, your honor.

MR. CABALLERO: [31] Judge, we have a motion for acquittal, and also we want to reurge our motion, which we filed earlier, for dismissal, and we just don't think the evidence is sufficient for a conviction.

THE COURT: Those motions are overruled.

MR. CABALLERO: Judge, we have no evidence to present.

THE COURT: Then the State rests and the Defense rests, both your motions are denied.

MR. CABALLERO: That's all I have, your honor.

THE COURT: Okay, then the Defense rests?

MR. CABALLERO: Yes sir.

THE COURT: And do both sides close?

MR. PATTON: Yes sir.

MR. CABALLERO: Yes sir.

THE COURT: Any argument.

[32] MR. PATTON: No argument, your honor.

MR. CABALLERO: We have none, Judge, we've already stated our position.

THE COURT: Then I'll find the Defendant guilty. Is there any evidence on the punishment that either side wishes to present?

MR. CABALLERO: No Judge, we have no further evidence.

THE COURT: Does the State have any?

MR. PATTON: No evidence, your honor.

THE COURT: Any argument about the punishment?

MR. CABALLERO: None Judge.

MR. PATTON: No, your honor.

THE COURT: Does the Defendant wish to say anything?

MR. BROWN: No, your honor.

THE COURT: Okay then, the punishment is a $45.00 fine and court [33] costs. Now, since I do so few of these, I'm not sure whether I impose sentence or whether the Defendant has ten days to accept sentence. In case he does, does he want to wait ten days or does he want to waive the ten days?

MR. CABALLERO: Judge, we will waive.

THE COURT: The Defendant so waives?

MR. BROWN: Yes sir.

THE COURT: Okay then, in case it's necessary, you're sentenced to a fine of $45.00 and court costs. Now we'll have to call the Clerk up here. Now, once you have this commitment you either have to pay it or go to jail, or make some other arrangements.

MR. CABALLERO: Judge, my intention is to file timely notice of appeal and to ask this Court for a stay of the execution of the sentence pending the appeal.

THE COURT: Where are you going to appeal, you can't appeal to the Court of Criminal Appeals?

MR. CABALLERO: Judge, we're going to file a notice of appeal to this Court, and the Court of Criminal Appeals has no jurisdiction [34] and I assume it's going to be to the Supreme Court of the United States.

THE COURT: Then we'll consider that the Judgement, the Court will stay the Judgment, the execution of the fine pending your perfection of the appeal to the United States Supreme Court. Please prepare an order for the Court to sign on the stay.

MR. CABALLERO: Yes sir.

THE COURT: Now if this were an ordinary appeal, all that would be stayed when you give your notice of appeal, but I don't know what the status is since it's under $100 fine. In case one is needed, it's granted. Now, we're here on the, there's some question now on the notice of appeal that would bring this case to this Court from the Municipal Court, and there was some delay in the filing in this Court. And the Court Reporter and the Court Secretary were all looking for this appeal, and we were notified by the Municipal Court that they had lost the appeal bond in this matter. And I think perhaps we should have some testimony that there was an appeal bond. Do you want your client to testify?

MR. CABALLERO: Yes, for those purposes Judge.

ZACKARY BROWN [35] being duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. CABALLERO:

Q. State your name sir?
A. Zackary C. Brown.
Q. Mr. Brown, did you ever appear in Municipal Court on the charges that you failed to identify yourself on December 9, 1977?
A. Yes I did.
Q. And what was the finding of that Court?
A. The finding was guilty.
Q. Did you plead guilty or did the Court find you guilty?
A. The Court found me guilty.

Q. After the finding of guilty, did you ever file a notice of appeal and a proper appeal bond with the Clerk of the Municipal Court?
A. Yes I did.
Q. And when was that?
A. It was on the. . . .
Q. Well in terms of the time you were found guilty?
A. It was on the 12th or 13th, I'm not sure, it was the same day I came up to your office.
Q. And I told you to go down and file some papers?
A. Right.
Q. And you went down there and filed an appeal bond?
[36] A. Yes I did.
Q. That was two or three days after you were found guilty?
A. Yes it was.
Q. And were you ever notified that for some reason the papers had been lost?
A. Well I went down to the Clerk because I was attempting to find out whether or not the judgment of the fine would be stayed pending that appeal, and they told me that they couldn't locate it, they couldn't locate the bond, they said that they had lost it.
Q. Did you ever file another one?
A. Yes, the Clerk told me, she said, file another one and I will count that day as the starting of the ten days.
Q. So you did file another notice of appeal and another appeal bond?
A. Yes I did.
Q. Pass the witness Judge.

THE COURT: Do you have any questions?

MR. PATTON: No, your honor.

THE COURT: Well the Court has inquired with the Clerk of the Corporation Court, and is satisfied that Notice of Appeal and the Appeal Bond was filed timely, and that this Court has [37] jurisdiction in that the first appeal bond was in fact filed by the Court but was lost by the Clerk, and therefore that the appeal was

perfected at that time. Even though the appeal bond in here, for some reason they had to fill out a second one, and of course isn't in the proper order cause the time is up on it, but the Clerk did notify this Court that they had lost the appeal bond, the first appeal bond. Also, on this Information, this officer, you signed the information, right?

OFFICER VENEGAS: Yes sir.

THE COURT: And your name is up there on top as one of the complaining witnesses, right?

OFFICER VENEGAS: Correct.

THE COURT: We'll find that the complaining witness signed it, even though on the face of it it shows it was sworn to by the other officer, you swore to it and your name's in the body of it, correct?

OFFICER VENEGAS: Correct.

THE COURT: We'll find that the appeal is perfected properly and [38] before the Court, and the complaint is in proper form.

MR. CABALLERO: Judge, I'm here on appoint of this Court to handle this case, and of course have so far proceeded in forma pauperis, and I would like for the Court to enter an order, I don't know if it's necessary to file an amended order, to allow my client to proceed with this appeal in forma pauperis.

THE COURT: Okay, does the State have anything to say on that?

MR. PATTON: No, your honor.

THE COURT: Then the Defendant may proceed in forma pauperis on his appeal. For the record, Mr. Caballero is appointed to proceed on representing this man at the pleasure of the United States Supreme Court.

* * * *

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

I, Loretta A. Doerr, the Official Court Reporter in and for the County Court at Law No. 2 of El Paso County, Texas, hereby certify that I reported in shorthand the testimony introduced at the hearing in the foregoing styled and numbered cause, and afterwards the same was reduced to typewriting, and that the foregoing pages contain, to the best of my knowledge, a full, true and complete statement of the testimony introduced before the Court on said hearing.

WITNESS my hand, in my official capacity, this 16th day of February, 1978.

/s/ Loretta A. Doerr
LORETTA A. DOERR

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

We, the undersigned attorneys of record in the above captioned cause, do hereby agree that the foregoing typewritten pages contain a full, true and correct transcript, of all the testimony and proceedings had, and all documentary evidence introduced during the trial of said cause, if any.

We further agree that the foregoing transcript of the Court Reporter's notes contains all objections to the admission or conclusion of evidence, the rulings of the Court thereon, and the bills of exception taken thereto, and evidence in connection therewith, if any.

The undersigned attorneys further agree that this record shall be filed as the transcript of the Court Reporter's notes and bills of exception in this cause.

/s/ Craig Patton
CRAIG PATTON
Attorney for State

/s/ Raymond Caballero
RAYMOND CABALLERO
Attorney for Defendant

SUPREME COURT OF THE UNITED STATES

No. 77-6673

ZACKARY C. BROWN, APPELLANT

v.

TEXAS

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis*,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

October 16, 1978

40

SUPREME COURT OF THE UNITED STATES

No. 77-6673

ZACKARY C. BROWN, APPELLANT

v.

TEXAS

APPEAL from the County Court at Law Number Two, El Paso County,

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is set for oral argument in tandem with *Michigan* v. *DeFillippo*, No. 77-1680.

October 16, 1978

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